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District of Columbia
New York
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PETER A. CASCIATO
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July 10, 1992

RECEIVED

JUL 13 1992

FEDERAL EXPRESS/BY HAND

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna Searcy, Secretary
Federal Communications Commission
1919 M Street NW Room 222
Washington, D.C. 20554

ORIGINAL
FILE

Re: Healdsburg, CA MM Docket No. 92-111

Dear Ms. Searcy:

Enclosed for filing in the above-captioned proceeding are an original and six copies of Healdsburg Broadcasting, Inc.'s (a) Petition to Enlarge Issues.

Should you have any questions concerning Healdsburg Broadcasting, Inc., please contact the undersigned.

Very truly yours,


Peter A. Casciato

enclosures

cc: Michael & Julia Akana
w/encls.

PAC:sc

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC

In re Applications of
Deas Communications, Inc.,
et al.

For A Construction Permit
For A New FM Station on
Channel 240A
Healdsburg, California

) MM Docket No. 92-111

) File Nos. BPH-910208MB
) et al.

RECEIVED

JUL 13 1992

To: Hon. Edward J. Kuhlmann,
Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION TO ENLARGE ISSUES

Healdsburg Broadcasting, Inc. ("HBI"), by its attorney and
pursuant to Section 1.229 of the Commission rules, hereby
petitions to further enlarge issues against Deas Communications,
Inc. ("Deas") as follows:

To determine whether Mario Edgar Deas testified falsely or
lacked candor in his submission of his June 29, 1992
Declaration to the Commission and the effect of such lack of
candor or misrepresentation on Deas' qualifications to be a
Commission licensee.¹

As indicated in HBI's Reply to Deas' Opposition to petition
to enlarge issues of even date, concerning the requested
transmitter site availability issue, Mario Edgar Deas, Deas'
President and putative only voting shareholder misrepresented in
a June 29, 1992 Declaration that "Deas presently has the tacit
approval of the Dry Creek Valley Association" See
Attachment A hereto, a copy of Mario Edgar Deas' June 29, 1992
Declaration. This is false. Attachment B hereto is a true copy
of the July 9, 1992 letter of Charles Richard, President of the

¹This motion is timely filed because it comes within 15 days
of the date of Deas' Opposition pleading, July 1, 1992, and
within one week of receipt of that pleading.

Dry Creek Valley Association, Inc. ("Association"), to the Sonoma County Department of Planning which "reaffirms its [the Association's] consistent and long-standing opposition to new transmitter towers [such as Deas'] in rural Sonoma County," and which concludes:

Mr. Deas has stated to the FCC that he has the "tacit approval of the Dry Creek Valley Association". That statement is flatly wrong. New tower sites in rural areas should be denied.

Ibid.

As indicated in HBI's Reply, there is a direct, unabashed contradiction in what Mr. Deas has stated to this Commission concerning the Deas' transmitter site proposal, that the Association has "tacitly agreed" to it, and Mr. Richard's unequivocal statement that what Mr. Deas says is "flatly wrong." Consequently, an issue to determine whether Deas has misrepresented or lacked candor in its submissions to this Commission should also be added. FCC v. WOKO, 329 U.S. 223(1943); WCOV, Inc., 5 FCC Rcd 3824 (1990); Richardson Broadcast Group, 7 FCC Rcd 1583 (1992).²

If the issue is added, HBI will request the following discovery:

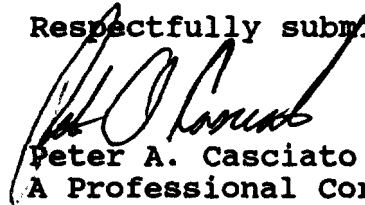
(a) all documents and correspondence of Deas, its principals, consultants, engineers, agents and attorneys that relate or pertain to its proposed transmitter site; and

(b) the depositions of all Deas principals, consultants, agents and engineers involved in selecting the

²Although HBI noted that this issue should be added against Deas in its Reply of even date, it has filed this separate petition to comport with Commission rule 1.229.

transmitter site and compliance with any local requirements.

Respectfully submitted,



Peter A. Casciato
A Professional Corporation
1500 Sansome Street Suite 201
San Francisco, CA 94111
(415) 291-8661

July 10, 1992

Counsel to Healdsburg
Broadcasting, Inc.

DECLARATION OF MARIO EDGAR DEAS

I, Mario Edgar Deas, declare under penalty of perjury that the following statement is true and correct.

I am the President, a Director and the sole voting shareholder of Deas Communications, Inc. ("Deas"), an applicant for a new FM radio station at Healdsburg, California. This Declaration responds to the Petition to Enlarge Issued filed by Healdsburg Broadcasting, Inc. ("HBI") against Deas.

HBI's Petition alleges, based on a statement by an attorney, William A. Carle III, and other materials previously submitted to the FCC and rejected, that in his opinion "it is improbable if not impossible for Deas to get approval from" the Sonoma County Board of Zoning Adjustments ("BZA") for our proposed transmitter site. His reasons are that in 1989, the Board rejected a proposal by Fuller Jeffrey Broadcasting for a much higher tower located at least five miles from ours, and by "the predictable outpouring of opposition by the Dry Creek Valley Association." I cannot help noting that no support for Mr. Carle's opinions is provided by either the Zoning Board or the Association.

In fact, there is no basis for his opinions, which merely echo those expressed in 1991 by another attorney in a predesignation Petition to Deny and rejected in the Healdsburg Hearing Designation Order.

Let me first state that on June 21, 1991, I executed an earlier Declaration under penalty of perjury in response to the nearly identical predesignation Petition to Deny. I believe that the majority of the points made by HBI are addressed in that declaration again demonstrating that they have been unable to produce any new evidence to support the assertion that our transmitter would not be approved. I have directed Deas counsel to append that June 21, 1991

statement to this Declaration as Appendix I. I state again, under oath, that every word of that statement is true and correct.

Second, the assertions by Mr. Carle are merely his "opinion". He does not mention any discussion with or statements from the BZA or the Dry Creek Valley Association ("the Association") regarding the likelihood of approval for our much lower and clearly much less imposing tower structure.

I have personally contacted the County Planner, Sigrid Swedenborg, and she assures me that every tower request will be examined individually and on its own merit. Therefore, no prior determination of the assurance of approval can be made before complete review and evaluation by the BZA.

I also met with the Association in early 1991 at a public meeting and discussed my proposed tower with them. I showed them pictures of the site and there was no opposition to the proposal. This also explains why Mr. Carle was unable to supply any documentation to back up either of his assertions regarding the BZA's or the Association's position concerning the acceptability of my proposed tower.

Third, Mr. Carle uses the BZA denial of the permit for the 407 foot tower proposed by Fuller Jeffrey Broadcasting/KHTT tower as a principal basis for his conclusion that the Deas tower will not be approved. Our proposed 69-foot pole is almost entirely hidden by trees, is five miles removed from the Fuller Jeffrey site, does not (like that proposal) require lights or strobes, and is clearly not of "like kind" as HBI insists. A far more "like kind" tower was approved by the BZA in 1988 on Fitch Mountain (see Appendix II and paragraph 3 of Appendix I).

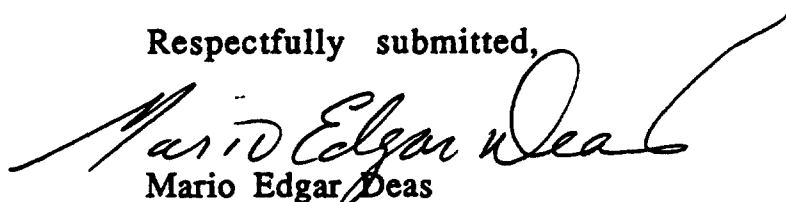
Fourth, although it is premature to directly address the BZA's guidelines, I can attest that Deas Communications will be able to meet the criteria as established by the BZA. I would not be pursuing this proposal if I were not highly confident both that it will be approved and that it will be the optimum site for coverage of Healdsburg

In Conclusion, and as the foregoing documents show, Deas presently has the tacit approval of the Dry Creek Valley Association

and has no reason to believe that our proposal, much lower in height and far removed from that of Jeffrey Fuller, will not be granted by the BZA. Therefore HBI cannot make "a reasonable showing that site availability is improbable" and there is no foundation for HBI's Petition, which should be denied.

Executed this 29 Day of June, 1992.

Respectfully submitted,

A handwritten signature in cursive script, reading "Mario Edgar Deas". The signature is written in dark ink and is positioned above the printed name.

Mario Edgar Deas

Dry Creek Valley Association, Inc.

P. O. BOX 1221 — HEALDSBURG — CALIFORNIA 95448

July 9, 1992

Sonoma County Department of Planning
575 Administration Drive, Room 105A
Santa Rosa, CA 95403

Ladies and Gentlemen:

The Dry Creek Valley Association is aware that several applications are pending before the FCC for a new FM station in Healdsburg (Channel 240A, 95.9 MHz). The successful applicant will have to obtain a use permit from the County of Sonoma for its transmission tower.

Our Association reaffirms its consistent and long-standing opposition to new transmission towers in rural areas. A proliferation of transmission towers in rural Sonoma County is clearly contrary to the General Plan and would represent unwarranted commercial intrusions into these areas. We note that there are existing, developed tower sites on, for example, Mt. St. Helena, Geyser Peak, Fitch Mountain and Mt. Jackson. It may be true that the ridges overlooking Dry Creek Valley could allow greater coverage for radio transmissions, but that is irrelevant under the General Plan if there are other feasible sites which are already developed with towers.

Finally, we wish to make it clear that although one of the applicants, Mr. Edgar Deas, appeared before our Board of Directors last year to explain his proposal, the Board did not approve that proposal or take any action on it, as no application had been submitted to the County. Rather, our Association's position remains as described above. Mr. Deas has stated to the FCC that he has the "tacit approval of the Dry Creek Valley Association". That statement is flatly wrong. New tower sites in rural areas should be denied.

Very truly yours,



CHARLES RICHARD
President

cc Board of Zoning Adjustments
Board of Supervisors
FCC

CERTIFICATE OF SERVICE

I, Peter A. Casciato, certify that the following is true and correct:

I am employed in the City and County of San Francisco, California, am over the age of eighteen years, and am not a party to the within entitled action:

My business address is: 1500 Sansome St., Suite 201, San Francisco, California 94111.

On July 10, 1992, I served the attached of Petition to Enlarge Issues of Healdsburg Broadcasting, Inc. by causing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, to be placed in the United States Post Office mail box at San Francisco, California, addressed to the following listed people:

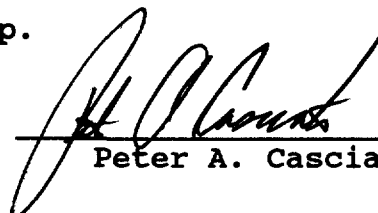
Hon. Edward J Kuhlmann
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW Room 220
Washington, DC 20036
(Federal Express\By Hand)

Larry Miller, Esq.
Mass Media Bureau
Federal Communications Commission
2025 M Street NW Room 7212
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(Federal Express\By Hand)

Chief, Data Management Staff
Audio Services Division
Mass Media Bureau
Federal Communications Commission
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Washington, D.C. 20554
(Federal Express\By Hand)

Lawrence Bernstein
Brinig & Bernstein
1818 N Street, NW, Suite 200
Washington, DC 20036
Attorney for Deas Communications, Inc.

Jerome S. Silber
Rosenman & Colin
575 Madison Avenue
New York, NY 10022-2585
Attorney for Empire Broadcasting Corp.


Peter A. Casciato